

## **II. REMARKS**

### **A. Status of Claims**

Claims 1-106 were pending at the time of the Restriction Requirement of November 14, 2006. New claims 107-112 have been added. Support for the new claims is found in the specification and claims as originally filed. Claims 9, 11, 24, 55, 57, 71, and 91 have been amended herein without prejudice or disclaimer, with support for the amendments found in the specification as originally filed, as discussed below. Claims 10, 56, and 92 have been cancelled. Therefore, claims 1-9, 11-55, 57-91, and 93-112 are pending, with claims 44-55, 57-91, and 93-106 subject to withdrawal should the Examiner reject Applicants' traversal to the Restriction Requirement.

### **B. Amendments to the Specification and Claims**

Claims 9, 11, 24, 55, 57, 71, and 91, and the corresponding parts of the specification have been amended to correct the HLB range from -5 to 20 to the range of 5 to 20. The error in original range is apparent from the data presented in Fig. 14. The error appears to have been caused by the inadvertent transcription of the lowest value shown on the x-axis, which is -5, instead of a range derived by the data points having positive Delta AE values. Fig. 14 clearly shows that there are no data points with negative HLB values. Also the data shows that virtually all the data points with positive Delta AE values have an HLB value between 5 and 20. Furthermore, all the data points with a Delta AE value greater than 1, have an HLB value greater than or equal to 5. A person of ordinary skill in the art would therefore recognize that the range -5 to 20 was written in error. Support for the corrected range of 5-20 is likewise presented by Fig. 14. Given the way the data points with positive Delta AE values tend to cluster in the range of 5-20, especially the way a significant number of data points form a thick vertical line of points at an HLB value greater than 5, a person of ordinary skill in the art would recognize that Fig. 14

discloses an HLB range than starts at 5. The Examiner is invited to contact the undersigned attorney with any questions, comments or suggestions relating to these amendments.

No new matter is added by the above amendments. Furthermore, the amendments are not in response to any request, objection, or rejection by the Examiner and do not create any estoppel or adversely affect the rights of Applicants or scope or interpretation of Applicants claims in any manner.

#### C. Response to Restriction Requirement

The Action requires restriction to one of nine groups for prosecution in this application. Applicants elect the methods of Group I, which includes claims 1-43 and new claims 107-112, which were added in this response. The election is made with traverse because there is no additional burden to search the Groups together—much less a “serious burden.” *Manual of Patent Examining Procedure* (MPEP) § 803 (noting that “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.”). Applicants note that the claims of all nine groups relate to methods and compositions of cementitious mixture containing fly ash and/or an air entrainment agent. Given the relatedness of all the claims, there is no additional burden to search the Groups together. Applicants therefore request that the Restriction Requirement be lifted.

Applicants note that this argument does not create an estoppel against Applicant and is not an admission that the restricted Groups are either patentably distinct or patentably indistinct from one another.